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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/147,405	04/01/99	GUSS	B REF/GUSS/P33

BACON & THOMAS
625 SLATERS LANE 4TH FLOOR
ALEXANDRIA VA 22314-1176

HM22/1003

EXAMINER

LEE, L

ART UNIT	PAPER NUMBER
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1645

16

DATE MAILED: 10/03/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/147,405

Applicant(s)
Guss et al

Examiner
LI Lee

Group Art Unit
1645



☒ Responsive to communication(s) filed on Aug 9, 1900

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-29 is/are pending in the applicat

Of the above, claim(s) 2-24 and 26-29 is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1 and 25 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Art Unit: 1645

DETAILED ACTION

1. Applicant's amendment filed on Aug 09, 2000 (Paper Number 15) has been received and entered. Claims 1, 8, and 9 have been amended, consequently claims 1-29 are pending in the instant application. Claims 1 and 25 have been examined.
2. The rejection of claims 1 and 25 under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter is withdrawn in view of applicant's amendment.
3. The rejection of claims 1 and 25 under 35 U.S.C. 102(b) as being anticipated by Pier (US 5,055,455, Oct 8, 1991) is withdrawn in view of applicant's remarks.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 25 are indefinite for using the term "originates" which is not clearly defined.

Without clearly defining the meaning of "originates", one ^{of} ordinary skill in the art cannot determine the metes and the bounds of the claimed invention.

Art Unit: 1645

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Timmerman et al (Infection and Immunity, 59(11) 4187-92, 1991).

8. Timmerman et al teach a purified protein/polypeptide from *Staphylococcus epidermidis*. The protein of Timmerman et al has adhesion activity as claimed invention. The purified protein of Timmerman et al is a cell wall surface located protein from *Staphylococcus epidermidis*. One of skill in the art can conclude that the purified protein of Timmerman et al inherently has the fibrinogen binding activity. Since the US Patent Office does not have the facilities for examining and comparing applicants' product with the product of the prior art reference, the burden is on applicants to show an unobvious distinction between the material structural and functional characteristics of the claimed product and the product of the prior art. See In re Best, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977).

Status of Claims

9. No claims are allowed. All claims stand rejected.

Any inquiry of a general nature or relating to the status of this general application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

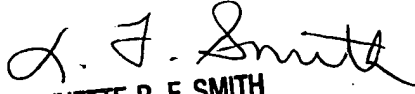
Art Unit: 1645

Papers relating to this application may be submitted to Technology Center 1600, Group 1645 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). Should applicant wish to FAX a response, the current FAX number for Group 1600 is (703) 308-4242.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Li Lee whose telephone number is (703) 308-8891. The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached at (703) 308-3909.

Li Lee

September 28, 2000


LYNETTE R. F. SMITH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600